



MAYOR AND COUNCIL AGENDA

NO. 19

DEPT.: Community Planning and Development Services / Legal DATE: Oct. 18, 2004

Contact: Deane Mellander, Planner III

Action: Introduction and adoption of ordinance to grant Street Closing and Abandonment Application SCA2004-00090: permanent closing and abandonment of a segment of right-of-way along Beall Avenue, east of unimproved Maryland Avenue within the Town Square development, Mayor and Council, applicants.

ACTION STATUS:

FOR THE MEETING OF: 11/1/04

INTRODUCED 4/30/04
PUB. HEARING 10/11/04
INSTRUCTIONS 10/11/04
APPROVED
EFFECTIVE

ROCKVILLE CITY CODE,

CHAPTER
SECTION

☐ CONSENT AGENDA

RECOMMENDATION: Staff recommends that this ordinance be introduced and adopted at the meeting of November 1, 2004. If the Mayor and Council wish to introduce the ordinance and proceed to adoption at the same meeting, the ordinance should first be introduced, then a motion should be made to waive the layover period. If the motion to waive the layover period is approved by an affirmative vote of four members of the Mayor and Council, then they may proceed to move to adopt the ordinance.

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

Abandonment is in connection with the Rockville Town Square project (PDP2003-00005).

BACKGROUND: The City filed three applications to abandon portions of public rights-of-way. A general location map of the three applications is shown on Attachment 2. The specific application areas are:

- SCA2004-00089: The unimproved right-of-way of Maryland Avenue between East Middle Lane and Beall Avenue and a portion of the right-of-way on East Middle Lane east of unimproved Maryland Avenue.
- SCA2004-00090: A portion of the right-of-way of Beall Avenue east of Maryland Avenue.
- SCA2004-00091: Along the east side of North Washington Street between East Middle Lane and Beall Avenue.

SCA2004-00089 and SCA-2004-00091 were approved by the Mayor and Council on May 24, 2004. Action on SCA2004-00090 was deferred due to pending litigation involving an adjoining property. With the settlement of the litigation, the street abandonment can now go forward. The area involved is a small triangle of right-of-way (759 square feet) at the intersection of Beall Avenue and future

Maryland Avenue that will become a portion of Block 4 of the Rockville Town Square project. Discussion and instruction of this item was done immediately following the close of the hearing because of the time constraints. Closing on the adjoining property is currently scheduled for late October. Closing on the development rights with RD Rockville, LLC for the Town Square project is scheduled for late December/early January. Therefore, introduction and adoption of the ordinance to approve the abandonment should occur on November 1, 2004 in order to complete the platting and other documentation needed for the scheduled closing.

The Planning Commission considered this application at their meeting on September 22, 2004 and recommended approval. Their recommendation is attached.

PREPARED BY:

Deane G. Mellander
Deane Mellander, Planner III

10/21/04
Date

APPROVE:

Robert J. Spalding
Robert J. Spalding, Chief of Planning

10-21-04
Date

APPROVE:

Arthur D. Chambers
Arthur D. Chambers, AICP, CPDS Director

10/22/04
Date

APPROVE:

Catherine Tuck Parrish
Catherine Tuck Parrish, Acting City Manager

10/26/04
Date

LIST OF ATTACHMENTS:

1. Proposed ordinance for adoption.
2. Planning Commission Recommendation.
3. Staff report of May 10, 2004 to Planning Commission.

Ordinance No. _____

ORDINANCE:

To grant Street Closing and Abandonment
Application No. SCA2004-00090, the
Mayor and Council of Rockville,
Applicant

WHEREAS, the Mayor and Council of Rockville, filed application No. SCA2004-00090, requesting that a segment of right-of-way along Beall Avenue, east of unimproved Maryland Avenue within the Town Square development in Rockville, Maryland, containing 759 square feet of land, more or less, lying in the Fourth Election District (City of Rockville), Montgomery County, Maryland, be permanently closed and abandoned pursuant to the provisions of Chapter 21, Article III, Division 2 entitled "Permanent Closing and Abandonment," of the Rockville City Code; and

WHEREAS, the Planning Commission of the City of Rockville recommends that the application be approved as set forth in a memorandum to the Mayor and Council dated September 23, 2004; and

WHEREAS, the Mayor and Council of Rockville and the American Oil Company, the owners, according to the assessment records, of property adjacent to the public right-of-way, which is the subject of the aforesaid application, and all public utility companies authorized by the Public Service Commission to operate within the City of Rockville, were duly notified by certified mail that said application had been filed and that a public hearing thereon would be held as specified in the public advertisement of the Mayor and Council of Rockville, Maryland; and

WHEREAS, the Mayor and Council of Rockville gave notice that a public hearing on said application would be held by the Mayor and Council of Rockville in the Council

Chamber, Rockville City Hall, 111 Maryland Avenue, Rockville, Maryland on October 11, 2004, at 7:00 p.m., or as soon thereafter as it may be heard, which notice was published not less than ten days prior to the time of such hearing in a newspaper of general circulation in the City of Rockville; and

WHEREAS, on October 11, 2004, said application came on for hearing at the time and place provided in said advertisement; and

WHEREAS, based upon the testimony presented and other evidence of record in the proceedings, the Mayor and Council determined that there is no public need for the subject right-of-way and the granting of the application would not adversely affect the health, safety, security and best interests of the community of the City of Rockville.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND, as follows:

1. That Street Closing and Abandonment Application No. SCA2004-00090, for the closing and abandonment of a segment of right-of-way along Beall Avenue, east of unimproved Maryland Avenue within the Town Square development in Rockville, Maryland, containing 759 square feet of land, more or less, being more fully described in Schedule A and shown on Schedule B, be and the same is hereby granted.

2 That this ordinance shall become effective upon the last of the following to occur:

a. The recordation in the Land Records of Montgomery County, Maryland by the City of a utility easement to allow all utility providers access and maintenance to such

Ordinance No. _____

-3-

utilities as may be needed within the area to be abandoned, in a form acceptable to the City Attorney.

b. The recordation of this ordinance in the Land Records for Montgomery County, Maryland by the City Attorney's Office.

I hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the Mayor and Council at its meeting of

Claire F. Funkhouser, CMC, City Clerk

BEALL AVENUE

Beginning at an open pipe found at the end of the fifth or North $88^{\circ}17'28''$ East, 41.68 foot line as described in a conveyance from N. Richard Kimmel to the Mayor and Council of Rockville by deed dated October 3, 1970 and recorded among the Land Records of Montgomery County, Maryland in Liber 4007 at Folio 132, then binding reversely with said fifth (5^{th}) line as now surveyed:

1. South $88^{\circ}28'01''$ West, 41.58 feet to a point, then leaving said fifth (5^{th}) line to cross and include part of Beall Avenue
2. 154.78 feet along the arc of a curve deflecting to the left, having a radius of 616.74 feet and a chord bearing and length of North $65^{\circ}23'06''$ East, 154.37 feet to a point, said point being on the second (2^{nd}) or North $57^{\circ}13'02''$ East, 205.76 foot line as described in a conveyance from David E. Betts et al to The American Oil Company, Inc. by deed dated October 14, 1964 and recorded among the aforesaid Land Records in Liber 3281 at Folio 182, then binding reversely with said line
3. South $57^{\circ}23'35''$ West, 117.25 feet to the point of beginning; containing 759 square feet or 0.01742 of an acre of land.

SCHEDULE B

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 88°28'01" W	41.58'

N
MSP NAD 83/91

LOT 8
CITY CENTER
PLAN NO. 7958

BEALL AVENUE
(Variable Width R(W))

PARCEL "B"

Abandonment
Area

R=616.74'

C1

L=154.78'

117.25'
2nd Line L 3281 F. 182

759 sq. ft.
0.01742 Acres

P.O.B.
(PART THREE)

5th Line L 4007 F. 132

WATER & COUNCIL OF ROCKVILLE
L 4007 F. 132

AMERICAN OIL COMPANY, INC
L 3281 F. 182

CURVE TABLE						
CURVE	RADIUS	LENGTH	DELTA	TANGENT	CHORD BEARING	CHORD
C1	616.74'	154.78'	14°22'44"	77.86'	N 65°23'06" E	154.37'

RIGHT-OF-WAY ABANDONMENT
BEALL AVENUE
CITY CENTER

SCALE: 1"=60' APRIL 2004
MONTGOMERY COUNTY, MARYLAND

MHG Macnaul, Mondrinos & Glascock, P.A.
Engineers & Planners
Landmarks Architects & Surveyors
8220 Wainman Road, Suite 120
Rockville, Maryland 20850-1216
Phone: 301.670.0040
Fax: 301.948.0650
WWW.MHGPA.COM

97-357
19-07-035



City of Rockville

MEMORANDUM

September 23, 2004

TO: Mayor and Council

FROM: Planning Commission

SUBJECT: Recommendation on Street Closing and Abandonment application SCA2004-00090, Mayor and Council, Applicant

At its meeting of September 22, 2004 the Planning Commission reviewed the above referenced street abandonment application located in the Town Center. The area involved is a small portion of the right-of-way of Beall Avenue at the intersection with future Maryland Avenue.

The Planning Division Staff Report recommended approval of the application as being necessary for the ultimate development of the Rockville Town Square project.

The Planning Commission received comments from the Planning staff and from the Legal staff. No other comments were received.

The Planning Commission is in agreement with the planning staff recommendation. Therefore the Planning Commission, on motion of Commissioner Holtz, seconded by Commissioner Mullican, recommends approval of the proposed street abandonment by a vote of 6 to 0 with one member absent.

/dem

cc: Planning Commission

**CITY OF ROCKVILLE PLANNING DIVISION
STAFF REPORT**

May 10, 2004

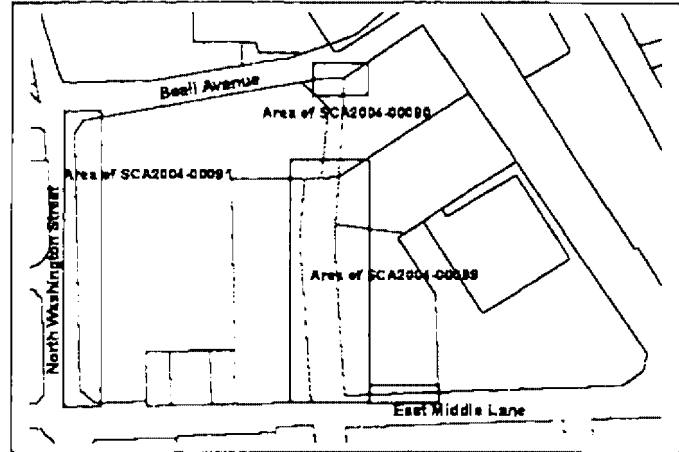
SUBJECT: Road Abandonment Applications
SCA2004-00089, SCA2004-00090,
SCA2004-00091

Applicant: Mayor and Council of Rockville
111 Maryland Avenue
Rockville, MD 20850

Owner: City of Rockville

Date Filed: April 30, 2004

Public Hearing: May 17, 2004



Location: Unimproved extension of Maryland Avenue between East Middle Lane and Beall Avenue and along east side of North Washington Street between East Middle Lane and Beall Avenue.

REQUEST:

The applicant requests the abandonment of portions of the right-of-way for Maryland Avenue between East Middle Lane and Beall Avenue and along East Middle Lane east of Maryland Avenue. In addition, the applicant requests abandonment of a portion of the area along the east side of existing North Washington Street. The abandonments are consistent with and required to implement the approved Rockville Town Square Preliminary Development Plan approved by the Planning Commission and the Use Permit for public improvements approved by the Mayor and Council.

STAFF RECOMMENDATION: Approval

ANALYSIS

Property Description

Application SCA2004-00089 proposes the abandonment of portions of the unimproved right-of-way for Maryland Avenue. The first portion is along the east side of the right-of-way, and a sliver of right-of-way of East Middle Lane east of Maryland Avenue. The second portion is along the west side of the right-of-way. The remaining configuration is consistent with the right-of-way approved by Use Permit application USE2003-00670 for the Town Square public improvements. Similarly, SCA2004-00090 proposes to abandon a small portion of the existing right-of-way for Beall Avenue on the east side of the future intersection of Beall Avenue with Maryland Avenue. The Use Permit approval for the Town Square public improvements also establishes the back of the curb as the limit of the public right-of-way along the east side of North Washington Street. The current sidewalk and street tree area is proposed to be abandoned in accordance with the approved reconfiguration of the street right-of-way.

Project Proposal

In approving the Use Permit application for public improvements in connection with the Rockville Town Square project, the public rights-of-way for the streets within the project were generally set at the back of the curb. This differs from the normal street design wherein the right-of-way usually includes the sidewalks and street trees. In the Town Square project, a Commercial Management District will be established that will be responsible for maintaining the sidewalk and street tree areas with public access easements. The right-of-way for Maryland Avenue between East Middle Lane and Beall Avenue was dedicated at approximately 80 feet wide in anticipation of being constructed in the normal configuration. With the approval of the use permit, the right-of-way for Maryland Avenue is reduced to a nominal 40 feet wide, necking down to 25 feet wide at intersection with East Middle Lane. SCA2004-00089 will establish the revised public right-of-way as approved by the use permit.

SCA2004-00090 proposes to abandon a small (759 square feet) triangle of the existing right-of-way of Beall Avenue, located at the future intersection of Maryland Avenue and Beall Avenue. This is consistent with the approved street alignments per the approved use permit.

SCA2004-00091 proposes to abandon the right-of-way along the east side of North Washington Street from the back of the curb to the edge of the right-of-way. The saw-tooth configuration of the existing right-of-way is to accommodate the existing street trees that are bordered by the brick wall dividing the sidewalk from the existing shopping center parking lot. As with Maryland Avenue, the approved right-of-way for North Washington Street will end at the back of the existing curb, with the sidewalk and street trees within a public easement on private property.

CONCLUSION

Staff finds that the proposed abandonments can be approved. The proposed abandonments are consistent with the street configurations approved in conjunction with approved Use Permit application USE2003-00670 for the Rockville Town Square project.

/dem
Attachments

APPLICATION TO CLOSE
AND ABANDON
PUBLIC WAY
ROCKVILLE, MARYLAND

20 AM 11: 51

NOTICE

This application must be typewritten or printed and filed in duplicate, with attachments, in the office of the City Clerk.

TO BE FILLED IN BY THE CLERK:

Mayor and Council of Rockville
Name of Applicant

Application No: SCA2004-00090

111 Maryland Avenue
Street Address

Filing Date: April 30, 2004

Rockville, MD 20850
City State Zip Code

Hearing Date: 5/17/04

240-314-8200
Telephone No.

Decision and Date: _____

The undersigned hereby makes application with the Mayor and Council of Rockville, Maryland, for the permanent closing and abandonment of the public way described herein, and in support of such application supplies the following information:

- (a) The name and address of the undersigned are as indicated above.
- (b) The public way which is the subject of this application is generally described by name and United States Post Office numbering or intersecting streets as follows: Part of Reall Avenue east of unimproved Maryland

Avenue

- (c) The interest of the undersigned in such public way is as follows:

Owner of adjacent property

- (d) The reasons for making such application are as follows:

Proposed abandonment is part of the Rockville Town Square project.

- (e) A description by metes and bounds of the public way which is the subject of this application is as follows:

See Attached Description:

Lot 5
CITY CENTER
PLAN NO. 7858



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 88°28'01" W	41.58'

PARCEL "A"

BEALL AVENUE

(Variable Width R(W))

PARCEL "B"

R=616.74'
Abandonment
Area

AMERICAN OIL COMPANY, INC

L 3281 F. 182

759 sq. ft.
0.01742 Acres

117.25'
2nd Line L 3281 F. 182

L=154.78'

S 57°23'35" W

P.O.B.
(PART THREE)

OFF

5th Line L 4007 F. 132

MAYOR & COUNCIL OF ROCKVILLE
L 4007 F. 132

CURVE TABLE						
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SCHEDULE "D"
RIGHT-OF-WAY ABANDONMENT
BEALL AVENUE
CITY CENTER

SCALE: 1"=60' APRIL, 2004
MONTGOMERY COUNTY, MARYLAND

MHG Macris, Hendricks & Glascock, P.A.
Engineers • Planners
Landscape Architects • Surveyors

8236 Wightman Road, Suite 120
Montgomery Village, Maryland
20895-1271

Phone 301.670.0840
Fax 301.648.0885
www.mhgas.com

97-387
(CP-21-038)

(11)

PART THREE: BEALL AVENUE

Beginning at an open pipe found at the end of the fifth or North $88^{\circ}17'28''$ East, 41.68 foot line as described in a conveyance from N. Richard Kimmel to the Mayor and Council of Rockville by deed dated October 3, 1970 and recorded among the Land Records of Montgomery County, Maryland in Liber 4007 at Folio 132, then binding reversely with said fifth (5^{th}) line as now surveyed:

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3. South $57^{\circ}23'35''$ West, 117.25 feet to the point of beginning; containing 759 square feet or 0.01742 of an acre of land.

- (f) According to assessment records, all of the owners of real property immediately adjacent to the public way, which is the subject of this application, are as follows:

<u>Name</u>	<u>Address</u>
1. Mayor and Council of Rockville	111 Maryland Avenue, Rockville, MD 20850
2. American Oil Company (City of Rockville, Contract Purchaser)	P.O. Box 06529, Chicago, IL 60606

Signature of Attorney

Signature of Applicant

Subscribed and sworn to before me this _____ day of _____,
19__.

Notary Public

My Commission Expires: _____

#9:ST.CLO